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ORIGINAL

THIS AMENDMENT:

Passed as amended by _____

Not Offered _____

Withdrawn _____ RECEIVED

SECURITIES DIVISION PROPOSED AMENDMENT # 1

2003 DEC -2 A 9:45

TIME/DATE PREPARED: November 14, 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

MATTER: PHILIP WILLIAM MERRILL.

AGENDA ITEM NO. S-

DOCKET NO: S-03450A-02-0000

OPEN MEETING DATE December 2, 2003

In paragraph 9, at page 2, line 20, delete: "e" in "Hays".

In paragraph 16, at page 3:

- At line 23, delete: "Respondent and"
- At line 23, delete: "Lori Mayfield" and insert in its place: "The Division"
- At line 23-24, delete: "in this matter" and insert in its place: "in connection with Lori Mayfield's investments."

In paragraph 23, at page 4:

- At line 20, delete: "CRD" and insert in its place: "CRP"
- At line 21, insert: "s" after "Science"

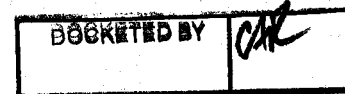
Arizona Corporation Commission

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In paragraph 24, at page 4:

- At line 25, delete "Respondent and"
- At line 25, after "MSDW and" insert: "the Division"
- At line 26, after "restitution" insert: "in connection with Janet Mayfield."



In paragraph 26, at page 5, line 8, before "sale", delete: "short" and insert in its place: "short-term"

In paragraph 30, at page 5, line 26, delete: "CRD" and insert in its place: "CRP"

In paragraph 31, at page 6, line 3, delete: "CRD" and insert in its place: "CRP"

At page 6, at lines 5, 6, 8, 10, 12, 16, 19, 21, 23, and 26, delete: "e" in "Hays"

At page 7, at lines 2, 3, 6, 7, 10, 11, 12, 15, 16, 17, 19, 20, and 22, **delete: "e" in "Hays"**

In footnote 22, at page 10, lines 24-25, **delete the entire sentence:**

Respondent argued that Mr. Donovan's qualifications to render an expert opinion in this matter are suspect because he never served in a position where he was charged with the duty of reviewing transactions for suitability, such as a supervisor, a branch manager or a compliance officer for a registered broker/dealer.

In paragraph 78, at page 12:

- At line 15, **delete: "2002" and insert in its place: "2000"**
- At line 15, **delete: "MDSW" and insert in its place: "MSDW"**
- At line 16, **insert: "s" after "Science"**

In paragraph 79, at page 12, line 17, **delete: "MDSW" and insert in its place: "MSDW"**

In paragraph 82, at page 13, line 2, **insert: "s" after "Science"**

In paragraph 83, at page 13, lines 11 and 13, **insert: "s" after "Science"**

In paragraph 86, at page 14, line 3, **insert: "s" after "Science"**

At page 17, lines 6 and 11, **delete: "e" in "Hays"**

In paragraph 115, at page 18, line 9, **insert: "s" after "Science"**

In paragraph 117, at page 18, line 20, **insert: "s" after "Science"**

At page 20, lines 5, 10, 11, and 12, **delete: "e" in "Hays"**

In paragraph 126, at page 20, line 8, after the comma after "transactions", **insert: "as to"**

In paragraph 126, at page 20, line 9:

- **Insert after "Janet Mayfield": "the Division"**
- **Insert a period after "restitution": "."**
- **Delete: "as"**
- **Delete: "they" and insert in its place: "Lori Mayfield and Janet Mayfield"**
- **Delete: "and the Respondent"**

In paragraph 126, at page 20, lines 10-12, relating to Sylvia Hays:

- **Delete the following (3) sentences:**

Ms. Hays testified that she decided not to reverse the unauthorized trade made in her account and preferred to "let it ride". Ms. Hays made the decision to remain in the fund even after Respondent offered to reverse the trade at no cost. Therefore, we are not ordering any restitution for Ms. Hays.

- Insert in its place the following:

As to Sylvia Hays, the evidence supports an order of restitution for \$10,078.97. The record shows that Ms. Hays invested \$10,115.13 on September 6, 2000. Interest on that amount at 10% from the date of purchase until December 2, 2003 is \$3,275.64. That total, less \$3,311.80, the amount received upon liquidation of the investment, is \$10,078.97.

In paragraph 126, at page 20, relating to Beatrice DuChene:

- At line 13, delete: \$1,925.26, and insert in its place: \$3,074.09.
- At line 18, after the end of the paragraph, insert the following sentence: "That amount plus interest at 10% from the date of the unauthorized sale until December 2, 2003 is \$3,074.09."

In paragraph 127, at page 20, lines 19-24, relating to Viola Brotherson:

- Delete the following paragraph in its entirety, including footnote 34:

Regarding the unsuitable transactions in Viola Brotherson's account, we order that an accounting be done to establish the appropriate restitution figure(fn. 34) That figure should include the losses and charges incurred by Viola Brotherson due to her investments in the MSDW High Income/Yield Fund, MSDW Health Sciences Fund B and MSDW Information Fund B, subject to any set offs, including withdrawals or income payments made by Viola Brotherson from those funds, for the period of time that Respondent was Viola Brotherson's financial advisor.

(Footnote 34): Based on the record, the amount of restitution to be ordered is unclear and an accounting is needed to ensure that the proper amount of restitution is ordered.

- And Insert the following in its place:

As to Viola Brotherson, the evidence supports an order of restitution for \$62,435.25. The record shows that on May 21, 1996, \$12,000 was invested into the Dean Witter High Income Fund ("DWHIF"); on May 22, 1996, \$1,600 was invested into the DWHIF; and on November 20, 1996, \$5,700 was invested into the DWHIF. On November 7, 1997, all of the DWHIF was sold and exchanged into Dean Witter High Yield Fund ("DWHY") (the result of a name change); on January 2, 1998, \$30,000 was invested into the DWHY; and on January 12, 1998, \$14,500 was invested into DWHY. Total monies invested were \$63,800.

On August 23, 2000, the DWHY was completely liquidated and exchanged into Morgan Stanley Dean Witter Information Fund ("MSDWIF"); on December 18, 2000, the MSDWIF was completely liquidated and invested into Morgan Stanley Dean Witter Health Sciences Fund ("MSDWHSF"); and on May 22, 2002, the MSDWHSF was completely liquidated for \$22,050.47.

During 1996, \$1,077 was paid out in dividends and capital gains. During 1997, \$2,147.24 was paid out in dividends and capital gains. During 1998, \$6,575.37 was paid out in dividends. During 1999, \$6,483.88 was paid out in dividends. During 2000, \$3,585.47 was paid out in dividends. During 2001, no dividends or capital gains were paid out. During 2002, no dividends or capital gains were paid out.

The total investments of \$63,800, less the total proceeds of the liquidation sale in the amount of \$22,050.47 and the total dividends and capital gains paid out in the amount of \$19,868.96, is \$21,880.57. That amount, plus interest at 10% from the date of each investment until December 2, 2003 totaling \$40,554.68, is \$62,435.25.

In paragraph 2(a), at page 21, line 8:

- Delete: "Sara" and insert in its place: "Sylvia"
- Delete: "e" in "Hays"

In paragraph 2(c), at page 21, line 12:

- Delete "Sara" and insert in its place: "Sylvia"
- Delete "e" in "Hays"

In paragraph 7, at page 21, at line 25, after "Restitution in the amount of":

- Delete: "\$1,925.26 payable to Beatrice DuChene" and
- Insert in its place: "\$3,074.09 related to Beatrice DuChene, \$10,078.97 related to Sylvia Hays, and \$62,435.25 related to Viola Brotherson."

In paragraph 7, at page 21, at line 26, delete the following sentence: "Pursuant to A.A.C. R14-4-308, the Division should conduct an accounting to establish the appropriate restitution figure owed to Viola Brotherson, and file its results in this Docket."

In paragraph 10, at page 22, line 2, before "not applicable in this matter:"

- Delete: "The doctrine of laches is" and
- Insert in its place: "The doctrines of laches and ratification are"

In the Conclusions of Law, at page 21, line 12: **Insert a comma (,) after "transactions"**

In the Order, at page 22:

- At line 7, after "restitution" and before "to Beatrice DuChene" insert in its place: **"to the State of Arizona, related"**
- At line 7, delete: **"\$1,925.26"** and insert in its place: **"\$3,074.09"**
- At line 7-8, delete: **"plus accrued interest from December 15, 1997, within sixty days of the date of this Order"**
- Delete lines 9-10: **"IT IS FURTHER ORDERED that the restitution ordered to Beatrice DuChene shall bear interest from December 15, 1997, at the rate of ten percent per year."**
- Beginning at line 9, after paragraph addressing restitution relating to Beatrice DuChene, insert the following new paragraph: **"IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, Respondent shall pay restitution to the State of Arizona relating to Sylvia Hays in the amount of \$10,078.97."**
- At lines 11-16, delete the paragraph addressing restitution relating to Viola Brotherson in its entirety:

IT IS FURTHER ORDERED that the Securities Division shall conduct an accounting to establish the restitution due to Viola Brotherson. That figure should include the losses and charges incurred by Viola Brotherson due to her investments in the MSDW High Income/Yield Fund, MSDW Health Science Fund B and MSDW Information Fund B, subject to any set offs, including withdrawals or income payments made by Viola Brotherson from those funds, for the period of time that Respondent was Viola Brotherson's financial advisor.

- And at line 11, insert in its place the following: **"IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-2032, Respondent shall pay restitution to the State of Arizona relating to Viola Brotherson in the amount of \$62,435.25."**
- Delete lines 17-19: **"IT IS FURTHER ORDERED that the restitution figure shall bear an interest of ten percent from the date of each purchase or charge associated with aforementioned funds in Viola Brotherson's account."**

- Delete lines 20-21: **“IT IS FURTHER ORDERED that Securities Division shall file its accounting with Docket Control thirty days after the date of this Decision.”**
- At lines 22-23, delete: **“figure filed by the Securities Division within sixty days after the Securities Division makes the filing”** and insert: **“within sixty days of the effective date of this Order.”**